

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ERIC GERSBACHER,

Plaintiff,

-against-

THE CITY OF NEW YORK, a municipal entity,  
NEW YORK CITY POLICE OFFICER  
GONZALEZ, NEW YORK CITY POLICE  
OFFICER RAMIREZ. NEW YORK CITY  
DEPUTY INSPECTOR EDWARD WINSKI,  
NEW YORK CITY “John Doe” POLICE  
OFFICERS 1-10,

Defendants.

**ANSWER ON BEHALF OF**  
**DEFENDANTS CITY OF**  
**NEW YORK, GONZALEZ**  
**AND WINSKI**

14-CV-7600

**JURY TRIAL DEMANDED**

-----X  
Defendants, by their attorney, **ZACAHARY W. CARTER**, Corporation Counsel  
of the City of New York, as and for its answer to the Complaint, respectfully allege as follows:

1. Deny the allegations set forth in paragraph “1” of the Complaint except admit that plaintiff purports to bring this action as stated therein.
2. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “2” of the Complaint.
3. Deny the allegations set forth in paragraph “3” of the Complaint.
4. Deny the allegations set forth in paragraph “4” of the Complaint.
5. Deny the allegations set forth in paragraph “5” of the Complaint.
6. Deny the allegations set forth in paragraph “6” of the Complaint except admit that plaintiff purports to invoke the Court’s jurisdiction stated therein.
7. Deny the allegations set forth in paragraph “7” of the Complaint except admit that plaintiff purports to invoke the Court’s jurisdiction stated therein.

8. Deny the allegations set forth in paragraph “8” of the Complaint except admit that plaintiff purports to lay venue stated therein.

9. Paragraph “9” of the Complaint sets forth a jury demand to which no response is required.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “10” of the Complaint.

11. Deny the allegations set forth in paragraph “11” of the Complaint except admit that The City of New York is a municipal entity authorized under the laws of the State of New York.

12. Deny the allegations set forth in paragraph “12” of the Complaint except admit that The City of New York maintains a police department and respectfully refer the Court to the New York City Charter and Administrative Code for a recitation of the relationship between the city and the New York City Police Department ("NYPD").

13. Admit that Deputy Inspector Winski and Officer Gonzalez were employed by the New York City Police Department and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph “13” of the Complaint.

14. Deny knowledge or information sufficient to form a belief as to the allegations set forth in paragraph "14" of the Complaint and further state that whether defendant police officers were "acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices" is a conclusion of law rather than an averment of fact to which no response is required.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “15” of the Complaint and further state that whether

defendant police officers were acting "within the scope and in furtherance of their employment" is a conclusion of law rather than an averment of fact to which no response is required.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "16" of the Complaint.

17. Deny the allegations set forth in paragraph "17" of the Complaint.

18. Deny the allegations set forth in paragraph "18" of the Complaint.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "19" of the Complaint.

20. Deny the allegations set forth in paragraph "20" of the Complaint.

21. Deny the allegations set forth in paragraph "21" of the Complaint.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "22" of the Complaint.

23. Deny the allegations set forth in paragraph "23" of the Complaint.

24. Deny the allegations set forth in paragraph "24" of the Complaint.

25. Deny the allegations set forth in paragraph "25" of the Complaint.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "26" of the Complaint.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "27" of the Complaint.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "28" of the Complaint.

29. Deny the allegations set forth in paragraph "29" of the Complaint.

30. Deny the allegations set forth in paragraph "30" of the Complaint.

31. Deny the allegations set forth in paragraph “31” of the Complaint.

32. Deny the allegations set forth in paragraph “32” of the Complaint.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “33” of the Complaint.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “34” of the Complaint.

35. Deny the allegations set forth in paragraph “35” of the Complaint.

36. Deny the allegations set forth in paragraph “36” of the Complaint.

37. Deny the allegations set forth in paragraph “37” of the Complaint.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “38” of the Complaint.

39. Deny the allegations set forth in paragraph “39” of the Complaint.

40. Deny the allegations set forth in paragraph “40” of the Complaint.

41. Deny the allegations set forth in paragraph “41” of the Complaint.

42. Deny the allegations set forth in paragraph “42” of the Complaint.

43. Deny the allegations set forth in paragraph “43” of the Complaint.

44. Deny the allegations set forth in paragraph “44” of the Complaint.

45. Deny the allegations set forth in paragraph “45” of the Complaint.

46. Deny the allegations set forth in paragraph “46” of the Complaint.

47. Deny the allegations set forth in paragraph “47” of the Complaint.

48. Deny the allegations set forth in paragraph “48” of the Complaint.

49. Deny the allegations set forth in paragraph “49” of the Complaint.

50. Deny the allegations set forth in paragraph “50” of the Complaint.

51. Deny the allegations set forth in paragraph “51” of the Complaint.

52. Deny the allegations set forth in paragraph “52” of the Complaint.

53. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “53” of the Complaint, except admit that plaintiff was placed in handcuffs/flexcuffs.

54. Deny the allegations set forth in paragraph “54” of the Complaint.

55. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “55” of the Complaint.

56. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “56” of the Complaint.

57. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “57” of the Complaint.

58. Deny the allegations set forth in paragraph “58” of the Complaint.

59. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “59” of the Complaint.

60. Deny the allegations set forth in paragraph “60” of the Complaint.

61. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “61” of the Complaint.

62. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “62” of the Complaint.

63. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “63” of the Complaint.

64. Deny the allegations set forth in paragraph “64” of the Complaint.

65. Deny the allegations set forth in paragraph “65” of the Complaint.

66. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “66” of the Complaint.

67. Deny the allegations set forth in paragraph “67” of the Complaint.

68. Deny the allegations set forth in paragraph “68” of the Complaint.

69. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “69” of the Complaint.

70. Deny the allegations set forth in paragraph “70” of the Complaint.

71. Deny the allegations set forth in paragraph “71” of the Complaint.

72. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “72” of the Complaint, except admit that plaintiff was able to use an inhaler within minutes of his arrest.

73. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “73” of the Complaint.

74. Deny the allegations set forth in paragraph “74” of the Complaint.

75. Deny the allegations set forth in paragraph “75” of the Complaint.

76. Deny the allegations set forth in paragraph “76” of the Complaint.

77. Deny the allegations set forth in paragraph “77” of the Complaint.

78. Admit that plaintiff got off of the ground at some point.

79. Deny the allegations set forth in paragraph “79” of the Complaint.

80. Deny the allegations set forth in paragraph “80” of the Complaint.

81. Deny the allegations set forth in paragraph “81” of the Complaint.

82. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “82” of the Complaint.

83. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “83” of the Complaint.

84. Deny the allegations set forth in paragraph “84” of the Complaint.

85. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “85” of the Complaint, except admit that officers were attempting to place him in handcuffs/flexcuffs.

86. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “86” of the Complaint.

87. Deny the allegations set forth in paragraph “87” of the Complaint.

88. Deny the allegations set forth in paragraph “88” of the Complaint.

89. Admit officers helped get plaintiff off the ground.

90. Deny the allegations set forth in paragraph “90” of the Complaint.

91. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “91” of the Complaint.

92. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “92” of the Complaint.

93. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “93” of the Complaint, but admit plaintiff was taken to the Precinct.

94. Deny the allegations set forth in paragraph “94” of the Complaint.

95. Deny the allegations set forth in paragraph “95” of the Complaint.

96. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “96” of the Complaint.

97. Deny the allegations set forth in paragraph “97” of the Complaint.

98. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “98” of the Complaint.

99. Deny the allegations set forth in paragraph “99” of the Complaint.

100. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “100” of the Complaint, except admit plaintiff’s handcuffs/flexcuffs were removed.

101. Deny the allegations set forth in paragraph “101” of the Complaint.

102. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “102” of the Complaint.

103. Admit plaintiff was taken to a holding cell.

104. Admit plaintiff remained at the precinct for approximately eleven hours.

105. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “105” of the Complaint.

106. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “106” of the Complaint.

107. Deny the allegations set forth in paragraph “107” of the Complaint.

108. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “108” of the Complaint.

109. Deny the allegations set forth in paragraph “109” of the Complaint.

110. Admit that plaintiff was transported to central booking.



111. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “111” of the Complaint.

112. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “112” of the Complaint.

113. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “113” of the Complaint.

114. Deny the allegations set forth in paragraph “114” of the Complaint, except admit that plaintiff was arraigned on September 21, 2011.

115. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “115” of the Complaint.

116. Deny the allegations set forth in paragraph “116” of the Complaint.

117. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “117” of the Complaint.

118. Deny the allegations set forth in paragraph “118” of the Complaint.

119. Deny the allegations set forth in paragraph “119” of the Complaint.

120. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “120” of the Complaint.

121. Deny the allegations set forth in paragraph “121” of the Complaint.

122. Deny the allegations set forth in paragraph “122” of the Complaint.

123. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “123” of the Complaint.

124. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “124” of the Complaint.

125. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “125” of the Complaint.

126. Deny the allegations set forth in paragraph “126” of the Complaint.

127. Deny the allegations set forth in paragraph “127” of the Complaint.

128. Deny the allegations set forth in paragraph “128” of the Complaint.

129. Deny the allegations set forth in paragraph “129” of the Complaint.

130. In response to the allegations set forth in paragraph "130" of the Complaint, defendant repeats and re-alleges the responses set forth in the preceding paragraphs of this Answer as if fully set forth herein.

131. Deny the allegations set forth in paragraph “131” of the Complaint.

132. Deny the allegations set forth in paragraph “132” of the Complaint.

133. Deny the allegations set forth in paragraph “133” of the Complaint.

134. Deny the allegations set forth in paragraph “134” of the Complaint.

135. Deny the allegations set forth in paragraph “135” of the Complaint.

136. Deny the allegations set forth in paragraph “136” of the Complaint.

137. Deny the allegations set forth in paragraph “137” of the Complaint.

138. Deny the allegations set forth in paragraph “138” of the Complaint.

139. In response to the allegations set forth in paragraph "139" of the Complaint, defendant repeats and re-alleges the responses set forth in the preceding paragraphs of this Answer as if fully set forth herein.

140. Deny the allegations set forth in paragraph “140” of the Complaint.

141. Deny the allegations set forth in paragraph “141” of the Complaint.

142. Deny the allegations set forth in paragraph “142” of the Complaint.

143. In response to the allegations set forth in paragraph "143" of the Complaint, defendant repeats and re-alleges the responses set forth in the preceding paragraphs of this Answer as if fully set forth herein.

144. Deny the allegations set forth in paragraph "144" of the Complaint.

145. Deny the allegations set forth in paragraph "145" of the Complaint.

146. Deny the allegations set forth in paragraph "146" of the Complaint.

147. Deny the allegations set forth in paragraph "147" of the Complaint.

148. Deny the allegations set forth in paragraph "148" of the Complaint.

149. Deny the allegations set forth in paragraph "149" of the Complaint.

150. In response to the allegations set forth in paragraph "150" of the Complaint, defendant repeats and re-alleges the responses set forth in the preceding paragraphs of this Answer as if fully set forth herein.

151. Deny the allegations set forth in paragraph "151" of the Complaint.

152. Deny the allegations set forth in paragraph "152" of the Complaint.

153. Deny the allegations set forth in paragraph "153" of the Complaint.

154. Deny the allegations set forth in paragraph "154" of the Complaint.

155. Deny the allegations set forth in paragraph "155" of the Complaint.

156. Deny the allegations set forth in paragraph "156" of the Complaint.

157. Deny the allegations set forth in paragraph "157" of the Complaint.

158. Deny the allegations set forth in paragraph "158" of the Complaint.

159. In response to the allegations set forth in paragraph "159" of the Complaint, defendant repeats and re-alleges the responses set forth in the preceding paragraphs of this Answer as if fully set forth herein.

160. Deny the allegations set forth in paragraph “160” of the Complaint.

161. Deny the allegations set forth in paragraph “161” of the Complaint.

162. Deny the allegations set forth in paragraph “162” of the Complaint.

163. Deny the allegations set forth in paragraph “163” of the Complaint.

164. Deny the allegations set forth in paragraph “164” of the Complaint.

165. In response to the allegations set forth in paragraph "165" of the Complaint, defendant repeats and re-alleges the responses set forth in the preceding paragraphs of this Answer as if fully set forth herein.

166. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “166” of the Complaint.

167. Deny the allegations set forth in paragraph “167” of the Complaint.

168. Deny the allegations set forth in paragraph “168” of the Complaint.

169. Deny the allegations set forth in paragraph “169” of the Complaint.

170. Deny the allegations set forth in paragraph “170” of the Complaint.

171. Deny the allegations set forth in paragraph “171” of the Complaint.

172. Deny the allegations set forth in paragraph “172” of the Complaint.

173. Deny the allegations set forth in paragraph “173” of the Complaint.

174. Deny the allegations set forth in paragraph “174” of the Complaint.

175. Deny the allegations set forth in paragraph “175” of the Complaint.

176. In response to the allegations set forth in paragraph "176" of the Complaint, defendant repeats and re-alleges the responses set forth in the preceding paragraphs of this Answer as if fully set forth herein.

177. Deny the allegations set forth in paragraph “177” of the Complaint.

178. Deny the allegations set forth in paragraph “178” of the Complaint.

179. Deny the allegations set forth in paragraph “179” of the Complaint.

180. Deny the allegations set forth in paragraph “180” of the Complaint including all of its subparts.

181. Deny the allegations set forth in paragraphs “181” to “262” including its various subparts.

**FIRST AFFIRMATIVE DEFENSE:**

The complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE:**

Defendant have not violated any rights, privileges, or immunities under the Constitution or laws of the United State or the State of New York or any political subdivision thereof, nor has defendant violated any Act of Congress providing for the protection of civil rights.

**THIRD AFFIRMATIVE DEFENSE:**

Any injury alleged to have been sustained resulted from plaintiffs’ own culpable or negligent conduct or that of a third party and was not the proximate result of any act of defendant.

**FOURTH AFFIRMATIVE DEFENSE:**

Plaintiff may have failed to comply with the conditions precedent to suit.

**FIFTH AFFIRMATIVE DEFENSE:**

There was probable cause for plaintiff’s arrest, detention and prosecution. Any use of force used was minimal and reasonable.

**SIXTH AFFIRMATIVE DEFENSE:**

Plaintiffs’ claims may be barred by the applicable statute of limitations.

**SEVENTH AFFIRMATIVE DEFENSE:**

At all times relevant to the acts alleged in the complaint, defendant City, its agents and officials, acted reasonably, properly, lawfully and in good faith in the exercise of their discretion. Consequently, defendant City of New York is entitled to governmental immunity.

**EIGHTH AFFIRMATIVE DEFENSE:**

Plaintiff may have failed, in whole or in part, to comply with New York General Municipal Law § 50(e), §50-h, §50-k and §50-i.

**NINTH AFFIRMATIVE DEFENSE:**

Plaintiff provoked any incident.

**TENTH AFFIRMATIVE DEFENSE:**

Punitive damages cannot be awarded against the City of New York.

**ELEVENTH AFFIRMATIVE DEFENSE:**

Plaintiff has failed to mitigate his alleged damages.

**TWELFTH AFFIRMATIVE DEFENSE:**

At all times relevant to the acts alleged in the complaint, defendant acted reasonably in the proper and lawful exercise of its discretion.

**THIRTEENTH AFFIRMATIVE DEFENSE:**

The Individual Defendants are entitled to qualified immunity.

**CONCLUSION**

**WHEREFORE**, defendants respectfully request that the Complaint be dismissed in its entirety, that the court enter judgment for defendants, and that defendants be granted costs, fees, and disbursements together with such other and further relief as the Court deems just and proper.

Dated: New York, New York  
October 22, 2015

**ZACHARY W. CARTER**  
Corporation Counsel of the  
City of New York  
*Attorney for Defendants,*  
100 Church Street,  
New York, N.Y. 10007-2601  
Tele: 212-356-2373

By: \_\_\_\_\_/s/\_\_\_\_\_  
**ANDREW LUCAS**  
Assistant Corporation Counsel  
Special Federal Litigation Division

To: **(VIA ECF)**  
**Wylie Stecklow and Sam Cohen**

14-CV-7600

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ERIC GERSBACHER,

Plaintiff,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

**ANSWER ON BEHALF OF  
THE CITY OF NEW YORK**

**ZACHARY W. CARTER**

Corporation Counsel of the City of New York

*Attorney for Defendant City of New York*

100 Church Street

New York, New York 10007-2601

Of Counsel: Andrew Lucas

Tel.: 212-356-2373

NYCLIS No.: 2014-034645

*Service of which is hereby acknowledged:*

....., N.Y. Dated: .....

Signed: .....

Print Name: .....

Attorney for: .....